

USDS SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8-22-13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v.-

JOHN A. MATTERA,

Defendant.

STIPULATION AND ORDER

12 Cr. 127 (RJS)

WHEREAS, on February 8, 2012, JOHN A. MATTERA (the "Defendant"), was charged in a four-count Indictment, 12 Cr. 127 (RJS) (the "Indictment"), with conspiracy to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count Two); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three); and money laundering, in violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2 (Count Four);

WHEREAS, the Indictment included a forfeiture allegation as to Counts One through Four of the Indictment seeking, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982, and Title 28, United States Code, Section 2461, the forfeiture of all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Four of the Indictment;

WHEREAS, on October 2, 2012, the Defendant pled guilty to Counts One, Two, and Three of the Indictment, pursuant to a plea agreement with the Government, wherein the Defendant admitted the forfeiture allegation with respect to Counts One through Three of the

Indictment and agreed to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and 982, and Title 28, United States Code, Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of the offenses, including but not limited to: (i) a sum of money equal to \$13,000,000 in United States currency, representing the amount of proceeds traceable to the commission of the offenses; and (ii) all right, title, and interest of the Defendant in the following specific property; (a) \$25,000 cash (the "Cash") (posted as part of the Defendant's bail); and (b) 2010 Ferrari Italia VIN Number ZFF67NFA3A0175042 (the "Vehicle") (securing Defendant's Bail);

WHEREAS, on November 8, 2012, the Court entered an Amended Consent Preliminary Order of Forfeiture as to Specific Property, which (i) imposed a money judgment against the Defendant, in the amount of at least \$11,800,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Three of the Indictment, and (ii) further ordered the forfeiture to the United States of all of the Defendant's right, title, and interest in, among other properties, the following:

- a. the Cash;
- b. the Vehicle; and
- c. any and all funds on deposit in Account No. 862-357750 held in the name of Lan T. Phan at TD Ameritrade;

(collectively, the "Specific Property");

WHEREAS, Lan T. Phan ("PHAN") agrees not to challenge the forfeiture of the Specific Property to the United States, in accordance with a Consent by PHAN in the parallel civil action involving the Securities and Exchange Commission, *SEC v. John A. Mattera, et al.*, 11 Civ. 8326 (PKC) (S.D.N.Y.), pursuant to the terms set forth herein;

IT IS HEREBY STIPULATED AND AGREED, by and between the plaintiff, United States of America, by its attorney Preet Bharara, United States Attorney, Assistant United States Attorney Paul M. Monteleoni, of counsel, and PHAN, and her counsel, David R. Chase, Esq., that:

1. PHAN agrees not to challenge the forfeiture of the Specific Property to the United States, including all right, title, and interest PHAN may otherwise have had to the Specific Property.
2. PHAN will execute all documentation, if any, necessary to effect the forfeiture of the Specific Property to the United States.
3. PHAN will not assist a third party in asserting a claim to the Specific Property in any ancillary proceeding.
4. In the event the United States files a civil forfeiture action pursuant to Title 18, United States Code, Section 981, or any other civil forfeiture action governed by Supplemental Rule G, seeking to forfeit the Specific Property, PHAN will not file a claim with the Court or otherwise contest such a civil forfeiture action and will not assist a third party in asserting any claim to the Specific Property.
5. PHAN is hereby barred from asserting, or assisting others in asserting, any claim against the Government, the Department of Justice ("DOJ"), the United States Attorney's Office for the Southern District of New York ("SDNY-USAO"), and the Internal Revenue Service ("IRS"), or any agents and employees of the Government, the DOJ, the SDNY-USAO, and the IRS, in connection with or arising out of the seizure, restraint, and/or constructive possession of the Specific Property, including, but not limited to, any claim that there was no probable cause to

seize the Specific Property, that PHAN is a prevailing party, or that PHAN is entitled to attorney's fees or any award of interest.

6. Each party to this Stipulation and Order shall bear its own costs and attorney's fees.

7. The Court shall have exclusive jurisdiction over the interpretation and enforcement of this Stipulation and Order.

8. This Stipulation and Order may be executed in one or more counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument. Signature pages may be transmitted by fax or by electronic file in PDF format, and such signatures shall be deemed equivalent to valid originals.


08/15/2013 05:11 +

PAGE 01

9. This Stipulation and Order constitutes the complete agreement between the parties hereto and may not be amended except by written consent thereof.

AGREED AND CONSENTED TO:

PREET BHARARA
United States Attorney
for the Southern District of New York


By: 
Paul M. Monteleone
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Tel.: (212) 637-2219

8/22/13
Date

LAN T. PHAN


By: 
Lan T. Phan

August 22, 2013
Date

By: 
David R. Chase, Esq.
Attorney for Lan T. Phan
David R. Chase, P.A.
1700 East Las Olas Boulevard, Suite 305
Fort Lauderdale, Florida 33301
Tel.: (954) 920-7779

8/22/13
Date

SO ORDERED:


HONORABLE RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE

8/23/13
Date